EIGHTY-SECOND CONGRESS FIRST SESSION
WASHINGTON, TUESDAY, FEBRUARY 27, 1940

RULES, REGULATIONS, ORDERS

TITLE 7—AGRICULTURE

CHAPTER III—BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[7.C.P.-Q.-Q. 56]

MODIFICATION OF FRUIT AND VEGETABLE QUARANTINE REGULATIONS

Introductory Note

Inspection of fruits and vegetables offered for entry from Newfoundland during the period since the promulgation of Quarantine No. 56 the Fruit and Vegetable Quarantine, effective November 1, 1923, indicates that importations of fruits and vegetables from Newfoundland can be safely permitted on a basis comparable to those from Canada. The present revision of the regulations supplemental to Quarantine No. 56 is made therefore to place the entry of fruits and vegetables from Newfoundland and its mainland territory of Labrador on the same status as those from Canada, with the exception of potatoes, which have long been and still are excluded from Newfoundland on account of potato wart.

AVERY S. HOYT,
Acting Chief.

AMENDMENT NO. 1 TO THE RULES AND REGULATIONS SUPPLEMENTAL TO NOTICE OF QUARANTINE NO. 56, AS REVISED EFFECTIVE DECEMBER 1, 1936, GOVERNING THE IMPORTATION OF FRUITS AND VEGETABLES INTO THE UNITED STATES

Under authority conferred by the Plant Quarantine Act of August 20, 1912 (37 Stat. 315), as amended, it is ordered that regulation 2 (Sec. 319.56-2) of the Rules and Regulations supplemental to Notice of Quarantine No. 56 (Sec. 319.56), governing the importation of fruits and vegetables into the United States, as revised effective December 1, 1936, be, and the same is hereby, amended to read as follows:

Regulation 2

§ 319.56-2 Restrictions on entry of fruits and vegetables. All importations of fruits and vegetables must be free from plants or portions of plants, as defined in regulation 1 (b) (§ 319.56-1 (b)).

Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs, dates, raisins, nuts, and dried beans and peas, may be imported without permit or other compliance with these regulations: Provided, That any such articles may be made subject to entry only under permit and on compliance with the safeguards to be prescribed therefor, when it shall be determined by the Secretary of Agriculture that the condition of drying, curing, or processing to which they have been subjected may not entirely eliminate risk. Such determination with respect to any such articles shall become effective after due notice.

Except as restricted, as to certain countries and districts¹ by special quarantines and other orders now in force and by such restrictive orders as may hereafter be promulgated, the following fruits may be imported from all countries under permit and on compliance with these regulations: Bananas, pineapples, lemons, and sour limes. Grapes of the European or vinifera type and any vegetable, except as restricted by special quarantine as indicated above, may be imported from any country under permit and on compliance with these regulations, at such ports as shall be authorized in the permits, on presentation of evidence satisfactory to the United States Department of Agriculture that such grapes and vegetables are not attacked in the country of origin by injurious insects, including fruit and melon flies (Trypetidae), or that their importation from definite areas or districts under approved safeguards prescribed in the permits can be authorized without risk.

The following additions and exceptions are authorized for the countries concerned to the fruits and vegetables listed in the preceding paragraph: Pro-

¹ See list of current quarantines and other restrictive orders and miscellaneous regulations, obtainable on request from the Bureau of Entomology and Plant Quarantine.

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Fruits and vegetables are not attacked by insects, including fruit flies and melon. Department of Agriculture that such evidence is satisfactory to the United States government for entry. The Administrative Committee consists of the Director, an officer of the Department of Justice designated by the Attorney General, and the Public Printer of the Department of Labor. The daily issue of the Federal Register will be furnished by mail to subscribers, free of postage, for $1.25 per month or $12.50 per year; single copies 10 cents each; payable in advance. Remit money order payable to the Superintendent of Documents directly to the Government Printing Office, Washington, D. C.

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That as to such additions and exceptions, the issuance of permits may be conditioned on presentation of evidence satisfactory to the United States Department of Agriculture that such fruits and vegetables are not attacked in the country or region by injurious insects, including fruit flies and melon; or that their importation from definite areas or districts under approved safeguards prescribed in the permits can be authorized without risk.

Frozen or treated fruits and vegetables from all countries. Upon compliance with these regulations and with such conditions as may be prescribed by the Chief of the Bureau of Entomology and Plant Quarantine, fruits and vegetables which have been treated, or are to be treated, under the supervision of a quarantine inspector of the Department, will be permitted entry under permit at such ports as may be specified in the permit, when, in the judgment of the Chief of the Bureau of Entomology and Plant Quarantine, such importation may be permitted without pest risk.

Commonwealth of Australia—States of Victoria, South Australia, and Tasmania. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from the States of Victoria, South Australia, and Tasmania under such conditions and at such ports as may be designated in the permits.

New Zealand. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from New Zealand under such conditions and at such ports as may be designated in the permits.

Japan. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from Japan at the port of Seattle and such other northern ports as may be designated in the permits.

Mexico. Potatoes may be imported from Mexico upon compliance with the regulations issued under the order of December 23, 1913. (§§ 321.1 to 321.8.)

Argentina. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from Argentina under such conditions and at such ports as may be designated in the permits.

Chile. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from Chile under such conditions and at such ports as may be designated in the permits.

West Indies. Upon compliance with these regulations all citrus fruits from the West Indies may be permitted entry at such ports as may be designated in the permits.

Jamaica. Entry of pineapples from Jamaica is restricted to the port of New York or such other northern ports as may be designated in the permits.

Canada, and Newfoundland, including its mainland territory of Labrador. Fruits and vegetables grown in the Dominion of Canada and in Newfoundland, including its mainland territory of Labrador, may be imported into the United States from these countries free from any restrictions whatsoever under these regulations.

General. In addition to the fruits, the entry of which is provided for in the preceding paragraphs of this regulation, such specialties as hothouse-grown fruits and other special fruits, which can be accepted by the United States Department of Agriculture as free from risk of carrying injurious insects, including fruit flies (Trypetidae), may be imported under such conditions and at such ports as may be designated in the permits.

This amendment shall be effective on and after February 27, 1940.

Done at the city of Washington this 24th day of February 1940.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL]  H. A. WALLACE, Secretary of Agriculture.

[FR. Doc. 40-804; Filed, February 24, 1940; 11:10 a.m.]

CHAPTER V—FEDERAL SURPLUS COMMODITIES CORPORATION

DESIGNATION OF AREAS UNDER SURPLUS FOOD STAMP PROGRAM

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United States of America, the following areas are hereby designated as areas in which food order stamps may be used and in which the agricultural commodities and products listed in Surplus Commodities Bulletin No. 41 effective 12:01 A.M., E. S. T., December 15, 1939, shall be considered surplus foods on the effective dates of such areas.

The area within the county limits of Greenville County, South Carolina.

The area within the county limits of Saline County, Kansas.

The area within the county limits of Sedgwick County, Kansas.

The area within the county limits of Shawnee County, Kansas.

The effective dates for the above areas shall be announced by the local representative of the Federal Surplus Commodities Corporation for the respective areas in local newspapers of general circulation.

[SEAL]  PHILIP F. MARIGRICE, Executive Vice President.

FEBRUARY 21, 1940.

[FR. Doc. 40-804; Filed, February 23, 1940; 3:17 p. m.]

1. 4 P.R. 4725.  
The importation of potatoes into the United States is governed by the regulations issued under the order of December 23, 1913 (§§ 321.1 to 321.8).
Designation of Areas Under Surplus Food Stamp Program

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United States of America, the following areas are hereby designated as areas in which food order stamps may be used and in which the agricultural commodities and products listed in Surplus Commodity Bulletin No. 4, effective 12:01 A.M., E.S.T., December 15, 1939 shall be considered surplus foods on the effective dates of such areas.

The area within the city limits of Springfield, Massachusetts and the immediate environs thereof as defined by the local representative of the Federal Surplus Commodities Corporation. The posting of the definition of “the immediate environs” in the office of the local representative of the Federal Surplus Commodities Corporation shall constitute due notice thereof.

The area within the county limits of Jefferson County, Kentucky.

The area within the county limits of Pierce County, Washington.

The effective dates for the above areas shall be announced by the local representative of the Federal Surplus Commodities Corporation for the respective areas in local newspapers of general circulation.

(Tentative)

February 21, 1940.

(F. R. Doc. 40-601; filed, February 23, 1940; 3:17 p. m.)

Title 9—Animals and Animal Products

Chapter II—Agricultural Marketing Service

Notice Under Packers and Stockyards Act

February 24, 1940.

To New Mexico Livestock Exchange Company, Inc.,

Albuquerque, N. Mex.

Notice is hereby given that after inquiry, as provided by Section 302 (b) of the Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 202 (b)), it has been ascertained by me that the stockyard known as the New Mexico Livestock Exchange Company, Inc., at Albuquerque, State of New Mexico, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 203 and 207 of 7 U.S.C. (Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[Tentative]

Glover B. Hill, Assistant Secretary of Agriculture.

(F. R. Doc. 40-602; filed, February 24, 1940; 11:53 a.m.)

Title 16—Commercial Practices

Chapter I—Federal Trade Commission

In the Matter of The Steel Office Furniture Institute, et al.

§ 3.27 (d) Combining or conspiring—To enhance, maintain or unify prices. Agreeing, combining or conspiring among themselves in connection with the fixing or offering, etc., in interstate commerce or in the District of Columbia, of steel vertical filing cabinets, steel horizontal sections and half-sections, and bookcases, steel hi-line and bookshelf units, steel card index cases, steel transfer cases, steel desks and tables, steel storage cabinets and wardrobes, and on the part of respondent Institute and respondent manufacturers of such products, to fix and maintain identical delivered prices, uniform discounts and terms and conditions of sale, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C. Supp. IV, sec. 45b) (Cease and Desist Order, The Steel Office Furniture Institute, et al., Docket 3319, February 20, 1940)

§ 3.27 (e)(2) Combining or conspiring—To enforce or bring about resale price maintenance: § 3.63 (c) Maintaining resale prices—Combination. Agreeing among themselves, in connection with offer, etc., in interstate commerce or in the District of Columbia, of steel vertical filing cabinets, steel horizontal sections and half-sections, and bookcases, steel hi-line and bookshelf units, steel card index cases, steel transfer cases, steel desks and tables, steel storage cabinets and wardrobes, and on the part of respondent Institute and respondent manufacturers of such products, to induce and, pursuant to such agreement, inducing their dealers and customers, or the dealers and customers of any of them, to join or form local associations having for their objective the maintenance of resale prices of resale prices, or (2) to require and, pursuant to such agreement, requiring their dealers and customers purchasing for resale to maintain resale prices fixed by the manufacturing company respondents, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C. Supp. IV, sec. 45b) (Cease and Desist Order, The Steel Office Furniture Institute, et al., Docket 3319, February 20, 1940)

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 20th day of February, A. D. 1940.

Commissioners: Ewin L. Davis, Chairman; Garland S. Ferguson, Charles E. March, William A. Ayers, Robert E. Freer.


Order to Cease and Desist

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the separate answers of the respondents,
and a stipulation dated January 15, 1940, entered into between certain of the respondents herein by their attorneys and W. T. Kelley, Chief Counsel for the Commission, which stipulation has been approved by the Commission, and which provides, among other things, that without other evidence and without intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that certain of said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, The Steel Office Furniture Institute, Remington Rand Inc., Browne-Morse Company, The General Fireproofing Company, Art Metal Construction Company, Benton Manufacturing Company, Corry-Jamestown Manufacturing Corporation, The Globe-Wernicke Co., Invisable Metal Furniture Company, Metal Office Furniture Company, The Shaw-Walker Company, Victor Safe & Equipment Company, Inc., and Yawman & Erbe Manufacturing Company, their officers, representatives, agents and employees, directly or through any corporate or other device, or through the respondent The Steel Office Furniture Institute, in connection with the offering for sale, sale and distribution of steel vertical filing cabinets; steel horizontal sections and half-sections, and bookcases; steel file and bookshelf units; steel card index cases; steel transfer cases; steel desks and tables; steel storage cabinets and wardrobes in interstate commerce or in the District of Columbia, do with- out prejudice to the right of the Commission should the facts so warrant reopen the same and render and all the regulations herein set forth as to the manner and form in which they have complied with this order.

It is further ordered, That this proceeding be and the same hereby is dismissed as to Columbia Steel Equipment Company and Tidewater Office Equipment Dealers' Association and its former respondents without prejudice to the right of the Commission should the facts so warrant reopen the same and resume prosecution of the complaint in accordance with the regular procedures of the respective Columbia Steel Equipment Company and Tidewater Office Equipment Dealers' Association and its former respondents are concerned.

By the Commission.

[SEAL]

Otis B. Johnson,
Secretary.

[F. R. Doc. 40-811; Filed, February 25, 1940; 10:04 a.m.]

TITLE 18—CONSERVATION OF POWER

CHAPTER I—FEDERAL POWER COMMISSION

[Order No. 72-A]

AMENDING THE "PROVISIONAL RULES OF PRACTICE AND REGULATIONS UNDER THE NATURAL GAS ACT, WITH APPROVED FORMS, EFFECTIVE JUNE 24, 1937" AS AMENDED BY ORDER NO. 72, ADOPTED JANUARY 3, 1940

February 20, 1940.

Commissioners: Lionel Olds, Chairman; Claude L. Draper, Basil Manly; John W. Scott, Clyde L. Seavey.

The Commission, pursuant to authority vested in it by the Natural Gas Act, particularly Section 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act, hereby adopts, promulgates and prescribes the following amendment to the "Provisional Rules of Practice and Regulations Under the Natural Gas Act, effective July 11, 1938," as hereofore prescribed by Order No. 52, adopted July 5, 1938:

Part 34, § 54.3, paragraph C (Changes in filed rates, charges, etc.) subsection (6) thereof, as prescribed in Order No. 72, adopted January 3, 1940, be and it is hereby amended to read as follows:

"(6) If the proposed change is an increase in rates, other than for resale to industrial customers, then 60 days prior to the proposed effective date of the change the Commission shall give such notice as it may from time to time prescribe. The additional notice so given shall be published in the Federal Register where the notice will have the full force and effect of a Federal Register notice of proposed rulemaking.

The said Order No. 72, adopted January 3, 1940, in all other respects shall remain in full force and effect.

The amendment to the "Provisional Rules of Practice and Regulations Under the Natural Gas Act" adopted, promulgated and prescribed by this order shall become effective on and after the date hereof and the Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.
BOARD to service with an employer shall be an application for an annuity file with the Railroad Retirement Board as of the date on which such claim or application was filed with the Social Security Board.

§ 210.03 Filing date. An application, filed in the manner and form prescribed in Section 210.02, shall be considered filed with the Board as of the date that it is received by the Board in Washington, D.C., or the date that it is received by a Regional Office of the Board, or the date that it is, in accordance with Section 210.02, delivered into the custody of a district manager or other designated field agent, whichever date is earlier.

§ 262.15 Offices of the Board. The main office established by the Board is located in the Territory of Columbia. The only other offices established by the Board are Regional Offices located at Boston, Massachusetts, New York, New York, Cleveland, Ohio, Chicago, Illinois, Richmond, Virginia, Atlanta, Georgia, Minneapolis, Minnesota, Kansas City, Missouri, Dallas, Texas, Denver, Colorado, Seattle, Washington, and San Francisco, California. (Offices of district managers or of any other field forces are not offices within the meaning of this section.) (Sec. 10, 50 Stat. 314; 45 U.S.C. Sup. III, 228.)

§ 262.16 (1) No officer, agent, or employee of the Board is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the General Counsel and to no one else. Process issued by the United States District Court for the District of Columbia will be accepted by the General Counsel only when delivered to him in person. Delivery of process issued by any other United States District Court located in a Federal District wherein the Board has established an office (see Section 262.15 of these Regulations as amended) will be accepted at any United States post office located in the State where such District Court is located, if such process with postage prepaid is deposited at such post office for registered mailing in a secure wrapper properly addressed to the General Counsel, Railroad Retirement Board, 16th and You Streets, Northwest, Washington, D.C.

Pursuant to the general authority contained in Section 10 of the Act of June 24, 1937 (Sec. 10, 50 Stat. 314; 45 U.S.C. Sup. III, 228), the last paragraph of § 260.03 (c) (5) of the Regulations of the Railroad Retirement Board under such Act (4 F.R. 1477) is amended, effective October 1, 1939, by Board Order 40-63 dated February 6, 1940, to read as follows:

"§ 260.03 (c) (5) Employees of railroad labor organization employers. Employers which are railroad labor organization employers as described in Section 202.15 of these Regulations shall show on their reports of monthly compensation of employees, by proper symbol or otherwise, the organization unit to which the report is applicable."

By Authority of the Board.

JOHN C. DAVIDSON,
Secretary.
February 19, 1940.

(F. R. Doc. 40-380; Filed, February 24, 1940; 12:54 p.m.)

TITLE 26—INTERNAL REVENUE
CHAPTER I—BUREAU OF INTERNAL REVENUE
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EMPLOYERS' TAX AND THE EMPLOYERS' TAX UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT

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such date. (Title VIII of the Social Security Act has been superseded as indicated in paragraph (b) (1).)

Section 9 (a) of the Carriers Taxing Act of 1937, approved June 29, 1937 (56 Stat. 439; 45 U.S.C., Sup. IV, 268 (a)), excludes the services of employees and employee representatives, as defined in such Act, from employment with respect to which the taxes under such Title VIII apply.

Section 902 (f) of the Social Security Act Amendments of 1939, approved August 10, 1939 (53 Stat. 1400), provides, in part, that no tax shall be collected under such Title VIII with respect to certain services performed in salvaging timber and clearing debris left by alien enemies.

(2) Regulations. Regulations relating to the taxes under Title VIII of the Social Security Act are set forth in:

(A) Treasury Decision 4704, approved November 5, 1936 (Part 401, Subpart G, Title 26, Code of Federal Regulations), as amended, entitled "Identification of Taxpayers under Title VIII of the Social Security Act.—Assignment of Identification Numbers to Employers and Account Numbers to Employees";

(B) Regulations 91, approved November 9, 1936 (Part 401 of such Title 26), as amended, entitled "Regulations 91 Relating to the Employees' Tax and the Employers' Tax under Title VIII of the Social Security Act"; and

(C) Treasury Decision 4739, approved May 24, 1937, making returns under Title VIII of the Social Security Act available to the Social Security Board.

(For amendments to Treasury Decision 4704, see Treasury Decision 4720, approved December 11, 1938. For amendments to Regulations 91, see Treasury Decision 4766, approved July 22, 1937; Treasury Decision 4769, approved October 15, 1937; Treasury Decision 4771, approved October 29, 1937; Treasury Decision 4778, approved November 23, 1937; Treasury Decision 4786, approved December 29, 1937; Treasury Decision 4801, approved April 26, 1938; Treasury Decision 4862, approved September 21, 1938 (Part 401 of such Title 26, 1938 Sup.); Treasury Decision 4934, approved September 6, 1939 (Part 401 of such Title 26, 1939 Sup.); and Treasury Decision 4941, approved of 1939, approved June 29, 1939 (Part 401 of such Title 26, 1939 Sup.).) Regulations 91 and Treasury Decision 4739, with amendments thereto made by the foregoing Treasury Decisions approved prior to June 2, 1938, are codified in Part 401, Title 26, Code of Federal Regulations. The foregoing Treasury Decisions approved after June 1, 1938, are codified in the supplements to the Code of Federal Regulations, as indicated in connection with each Treasury Decision.)

(b) Federal Insurance Contributions Act and regulations thereunder.—(1) Statutes. Effective April 1, 1939, the provisions of Title II of the Social Security Act were reenacted in the Internal Revenue Code, approved February 10, 1939, as subchapter A of chapter 9 thereof (53 Stat. 175). Such subchapter, which superseded Title VIII of the Social Security Act, may be termed "Federal Insurance Contributions Act," under the authority contained in section 1432 of such subchapter, as added by section 607 of the Social Security Act Amendments of 1939 (53 Stat. 1387). The Federal Insurance Contributions Act imposes an excise tax on employers of one or more employees, and an income tax on employees, measured by wages paid and received on and after April 1, 1939, with respect to employment after such date.

Substantial changes in the provisions of the Federal Insurance Contributions Act are effected by amendments thereto contained in sections 601 to 607, inclusive, and 905 to 905, inclusive, of the Social Security Act Amendments of 1939 (53 Stat. 1381, 1400). In addition, the application of the Act is modified by section 902 (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400) to include the excise tax with respect to wages paid and received after December 31, 1938, with respect to employment after such date.

(2) Regulations. The regulations contained in Treasury Decision 4704, as amended, Regulations 91, as amended, and Treasury Decision 4739 are prescribed under, and made applicable to, the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code, by Treasury Decision 4885, approved February 11, 1939 (Part 495, Subpart B, Title 26, Code of Federal Regulations, 1939 Sup.). (For amendments to Regulations 91, as so made applicable to the Internal Revenue Code, see Treasury Decision 4934, approved September 6, 1939 (Part 401 of such Title 26, 1939 Sup.), and Treasury Decision 4935, approved September 6, 1939 (Part 401 of such Title 26, 1939 Sup.); and Treasury Decision 4941, approved September 20, 1939 (Part 401 of such Title 26, 1939 Sup.). For the extent to which Treasury Decision 4704 and Regulations 91, as so made applicable to the Federal Insurance Contributions Act are superseded by these regulations, see section 402.102. See also section 402.101, relating to the scope of these regulations.)

SUBPART A—SCOPE OF REGULATIONS
§ 402.101 Scope of regulations.—(a) Taxes with respect to wages paid after 1939. These regulations relate to the employees' tax and employers' tax with respect to wages paid and received on or after January 1, 1940, imposed by the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code), as amended and modified by the Social Security Act Amendments of 1939 and other provisions of law. (See section 402.1 to 402.53, inclusive, for a chronological description of the pertinent statutes.)

(b) Additional subjects covered.—(1) Adjustments, settlements, and claims. In addition to adjustments, settlements, and claims made in connection with the taxes imposed under Title VIII of the Social Security Act or the Federal Insurance Contributions Act, the regulations also relate to adjustments, settlements, and claims made on or after such date in connection with the taxes under Title II of the Social Security Act or the Federal Insurance Contributions Act in force prior to January 1, 1940, with respect to wages paid and received prior to such date, but not to any adjustment reported in whole or in part on any return except an adjustment reported by means of a supplemental return for a tax-return period ended prior to such date.

(2) Identification of taxpayers. These regulations also relate to the use after December 31, 1939, of account numbers and identification numbers assigned to employees and employers under Title VIII of the Social Security Act or the Federal Insurance Contributions Act in force before or after the first month of January 1, 1940, and to applications for and assignment of such numbers under the Federal Insurance Contributions Act in force after December 31, 1939.

(3) Employment. In addition to employment in the case of remuneration therefor paid and received on or after January 1, 1940, these regulations also relate to employment performed on or after such date in the case of remuneration therefor paid and received prior to such date.*

§ 402.102 Extent to which these regulations supersede Regulations 91 and Treasury Decision 4704. These regulations...
the plan or system providing for such benefits or upon termination of such plan or system or upon the death of or his employment with such employer;
(3) The payment by an employer, with respect to the subject to which such plan or system applies, of (A) the tax imposed upon an employee under section 1400 or (B) of any state unemployment compensation law; or (4) Dismissal payments which the employee
(b) EMPLOYMENT. The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in section 1401, and any service of whatever nature, performed after December 31, 1939, by an employee for the performance of any executive, administrative, or professional function of the citizenship or residence of either, (A) within the United States, or (B) on or in a vessel of specific to the benefit or payment of any private shareholder or individual.
(b) Service performed in the employer of a foreign government (including service as a consul or other officer or employee or a diplomatic representative of the United States Government, or of an Instrumentality thereby owned by a foreign government).
(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an Instrumentality of the United States Government, (B) If the service is performed by a vessel which is wholly owned by the United States, (C) Service performed in the employ of the United States Government, (D) Service performed in the employ of the United States Government.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; and (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; and (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; and (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; and (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; and (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
(A) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; (B) Service performed in the employ of a voluntary employee's beneficiary association exempt from income tax under section 27; (C) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532; and (D) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 1532.
ment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Any service performed by a person not employed at the time of its performance in the capacities and conditions described in paragraph (2) of subsection (b) of this section shall be considered to be employment performed as an "employee" for purposes of subchapter A of chapter 1 of title 26 of the Internal Revenue Code of 1986, or the Internal Revenue Code, as applicable with respect to service performed in a pay period by an employee for the person employing him, where service is excepted by paragraph (9) of subsection (b).

(d) Employee. The term "employee" includes an officer of a corporation.

(e) State. The term "State" includes Alaska, Hawaii, and the District of Columbia.

(f) Person. The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(g) American vessel. The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is composed entirely of citizens or residents of the United States or corporations organized under the laws of the United States.

(h) Agricultural labor. The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, handling, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in safeguarding or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any agricultural commodity (as defined in the Agricultural Marketing Act, as amended, or in connection with growing or handling of sweet potatoes, or in connection with the hatching of poultry, or in connection with the growing or handling of mushrooms, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed incident to ordinary farming operations or, in the case of vegetables to prevent an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to apply to services performed in connection with commercial canning or condensing operations or in connection with the lading of agricultural or horticultural commodities on vessels (See. 1429, I.R.C., as amended by secs. 609, 663, Social Security Act Amendments of 1939) No. 39—2

Section 3797 (a) and (9) of the Internal Revenue Code

(a) When used in this title [Internal Revenue Code]... (9) A vessel... (9) A vessel... (9) A vessel... (9) A vessel... (9) A vessel... (9) A vessel... (9) A vessel...

(b) Person. The term "person" includes an individual, a partnership, a corporation, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(1) Tax means the employers' tax, or the employers' tax as hereinafter defined in this section, or both.

(2) Employers' tax means the tax imposed by section 1400 of the Act, except that such term when used in subsection G includes also the tax imposed by sections 1401 of the Federal Insurance Contributions Act in force prior to August 10, 1939, and the tax imposed by section 801 of the Social Security Act.

(3) Employers' tax means the tax imposed by section 1410 of the Act, except that such term when used in subsection G includes also the tax imposed by section 1410 of the Federal Insurance Contributions Act in force prior to August 10, 1939, and the tax imposed by section 801 of the Social Security Act.

(4) Identification number means the identifying number of an employer assigned, as the case may be, under the Act, the Federal Insurance Contributions Act in force prior to August 10, 1939, or Title VIII of the Social Security Act.

(5) An employee is deemed to include any person acting in a fiduciary capacity.

(b) Definitions and use of terms. As used hereinafter in these regulations—

(1) The terms defined in the above sections shall have the meanings so assigned to them.


(6) Act means the Federal Insurance Contributions Act, as defined in this section.

(7) Regulations 91 means the regulations approved November 9, 1936 (Part 401, Title 26, Code of Federal Regulations), as amended, relating to the employers' tax and the employers' tax under section 11 of the Social Security Act, and such regulations, as made applicable to such subchapter A of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4855, approved February 10, 1959 (Part 655, Subpart B, of such title), together with any amendments to such regulations as so made applicable to the Internal Revenue Code.
the laws of the United States or of any foreign country;
(6) Service performed in the employment of the United States Government or of an instrumentality of the United States;
(7) Service performed in the employment of a State, a political subdivision thereof, or an instrumentality of any State or political subdivision;
(8) Service performed in the employment of a corporation, employer, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
(9) Service performed by an individual as an employee as defined in section 1392 (b); and
(10) Service performed as an employee representative as defined in section 1392 (e).

SECTION 905 (a) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

No service performed at any time during the calendar year 1939 by any individual, shall, by reason of the individual having attained the age of sixty-five, be excepted from employment as so defined.

SECTION 905 (r) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

No tax shall be collected under the Federal Insurance Contributions Act, with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of sections 1426 (b), (c), and (d) of the Internal Revenue Code, as amended.

SECTION 2 OF THE ACT OF AUGUST 11, 1939 (53 STAT. 1420)

No tax shall be collected under the Federal Insurance Contributions Act, with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land, or clearing such land of brush and other debris, left by a hurricane.

§ 402.202 Employment prior to January 1, 1940.

Under the provisions of section 1426 (b) of the Federal Insurance Contributions Act, as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939; services performed prior to January 1, 1940, constitute employment if they were employment as defined in section 1426 (b) prior to such date. Thus, services performed prior to January 1, 1940, within the United States by an employee for the person employing him, constitute employment within the meaning of the Federal Insurance Contributions Act in force on or after January 1, 1940, if the employee under such contract is engaged or employed on or in connection with an American vessel—see paragraph (c)—and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens or residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment within the meaning of the Act.

§ 402.203 Employment after December 31, 1939.—(a) In general.

Whether services performed on or after January 1, 1940, constitute employment is determined under section 1426 (b) of the Act, that is, section 1426 (b), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939. This section of these regulations, and sections 402.204 and 402.205 (relating to who are employees and employers), section 402.206 (relating to excluded services in general), section 402.207 (relating to included and excluded services), and sections 402.208 to 402.226, inclusive (relating to the several classes of excepted services), apply with respect only to services performed on or after January 1, 1940. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see section 402.207. For provisions relating to services performed prior to January 1, 1940, see section 402.205.)

(b) Services performed within the United States.

Services performed on or after January 1, 1940, within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 1426 (b) of the Act, constitute employment within the meaning of the Act. Services performed outside the United States, that is, outside the several States, the District of Columbia, or the Territories of Alaska or Hawaii (except certain services performed on or in connection with an American vessel—see paragraph (c)), do not constitute employment.

With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens or residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment within the meaning of the Act.

(g) Services performed outside the United States.

Services performed on or after January 1, 1940, by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided:
The employee is also employed "on and in connection with" such vessel when outside the United States; and

(2) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States. For example, the performance of which the vessel touches at a port within the United States; and

(3) The services are not excepted under section 1426 (b) of the Act. (See particularly section 402.225 of these regulations, relating to Fishing.)

An employee performs services on and in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed on the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also services connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

If services are performed by an employee "on and in connection with" an American vessel when outside the United States and conditions (2) and (3) above are met, then the services of that employee performed on or in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel). Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding similar services performed by others on or in connection with the vessel may constitute employment.

The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if, the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

§ 402.204 Who are employees. Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

An individual performing services as an independent contractor is not as to such services an employee.

Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial. The relationship of employer and employee in fact exists.

No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation but a director as such is not. A director may be an employee of the corporation only if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the Act. (See section 402.203.)

§ 402.205 Who are employers. Every person is an employer if he employs one or more employees. Neither the number of employees employed nor the period during which any such employee is employed is material.

An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

Although a person may be an employer under this section, services performed in his employ may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the Act. (See section 402.203.)

Section 1426 (n) of the Act

The term "employment" means any service of whatever nature, performed after December 31, 1939, by an employee for the person employing him except—

(See, 1426 (B), IRC, as amended by secs. 306, 305, Social Security Act Amendments of 1939.)

§ 402.205 Excepted services in general. Services performed on or after January 1, 1940, by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 1426 (b) of the Act, that is, section 1426 (b), as amended, effective January 1, 1940, by section 506 of the Social Security Act Amendments of 1939. These services do not constitute employment for purposes of the tax even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel.

The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural
labor. (See section 402.208) A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While no tax liability is incurred with respect to A’s remuneration for services performed in the employ of B (the services being excepted as agricultural labor), the exception does not embrace the services performed by A in the employ of C which constitute employment and the tax attaches with respect to the wages (see section 402.237) for such services.

This section, and the sections which follow it relating to included and excluded services and the several classes of excepted services, apply with respect only to services performed on or after January 1, 1940. (See section 402.203 (a).) (For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 50 hours in the store. None of A’s services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment.

During another month A works 75 hours on the farm and 120 hours in the store. All of A’s services during the month are employment, since one-half or more of his services during the month constitutes employment.

Example 2. Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C’s services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C’s services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment.

During another week C works 22 hours in the home and 15 hours in the office. None of C’s services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

For purposes of this section, a “pay period” is the period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to any service performed by an employee for the person employing him, where any of such service is excepted by paragraph (n) of subsection (b). (Sec. 31, I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.207 Included and excluded services. If a portion of the services performed by an employee for the person employing him during a pay period constitute employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. This section is not applicable, the tax attaches with respect to such services as constitute employment as defined in section 1426 (b) of the Act.

Example 1. Employee A is employed by B who operates a farm and a store. A’s services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 50 hours in the store. None of A’s services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment.

If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee’s services constitutes employment, but the rules prescribed herein are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 1426 (b) of the Act.

The term “agricultural labor” includes all services performed by an employee for the person employing him during a pay period which constitute employment, and the remainder.

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant of a farm, in conjunction with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in milking timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 16 (g) of the Agricultural Marketing Act of 1916, in connection with the raising or harvesting of mushrooms, or in connection with the gathering of strawberries, the growing of cotton, or in connection with the operation or maintenance of ditches, canals, or other waterways for farming purposes.
for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, coruscages, and bouquets), do not constitute "farms".

(c) Services described in section 1426 (h) (2) of the act. The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms are excepted as agricultural labor, provided the major part of such services is performed on a farm:

(1) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(2) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in (1) above may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) Services described in section 1426 (h) (3) of the act. Services performed by an employee in the employ of any person in connection with any of the following operations are excepted as agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production of ginning of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (from a living tree, or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) Services described in section 1426 (h) (4) of the act. (1) Services performed by an employee in the employ of a farmer or a farmer's cooperative organization, or group of farmers, in connection with any of the following operations are excepted as agricultural labor, provided the major part of such services is performed on a farm:

(1) Stock raising, shearing, feeding, caring for, training, marketing, or packing of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(2) The raising or harvesting of any agricultural or horticultural commodity.

The term "farm" as used in this and succeeding paragraphs of this section includes stock raising, poultry, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute "farms".
activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (a) of this section."

Section 1426 (b) of the Act

The term "employment" means • • • any service of whatever nature, performed after December 31, 1939, by an employee for the person employing him • • • except—

(3) Casual labor not in the course of the employer's trade or business. The term "casual labor" includes labor which is occasional, incidental, or irregular.

The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer. Thus, labor which is occasional, incidental, or irregular, and does not promote or advance the employer's trade or business, is excepted.

Example 1. A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are excepted.

Casual labor, that is, labor which is occasional, incidental, or irregular, but which is in the course of the employer's trade or business, does not come within the above exception.

Example 2. C's business is that of operating a sawmill. He employs D for two hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted.

Example 3. E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, not excepted.

Casual labor performed for a corporation does not come within this exception.*

Section 1426 (b) (4) of the Act

The term "employment" means • • • any service of whatever nature, performed after December 31, 1939, by an employee for the person employing him • • • except—

(4) Services performed by an individual in the employ of his son or daughter. (Sec. 1426 (b) (4), I.R.C., as amended by secs. 606, Social Security Act Amendments of 1939)

§ 402.210 Casual labor not in the course of employer's trade or business. The term "casual labor" includes labor which is occasional, incidental, or irregular.

The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer.

Thus, labor which is occasional, incidental, or irregular, and does not promote or advance the employer's trade or business, is excepted.

Example 1. A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are excepted.

Casual labor, that is, labor which is occasional, incidental, or irregular, but which is in the course of the employer's trade or business, does not come within the above exception.

Example 2. C's business is that of operating a sawmill. He employs D for two hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted.

Example 3. E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, not excepted.

Casual labor performed for a corporation does not come within this exception.*

Section 1426 (b) (4) of the Act

The term "employment" means • • • any service of whatever nature, performed after December 31, 1939, by an employee for the person employing him • • • except—

(4) Services performed by an individual in the employ of his son or daughter. (Sec. 1426 (b) (4), I.R.C., as amended by secs. 606, Social Security Act Amendments of 1939)

§ 402.211 Family employment. Certain services are excepted because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

Under (1) and (2), above, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under (3), in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

Services performed in the employ of a person other than an individual (such as a corporation or a partnership) are not within the exception.*

Section 1426 (b) (5) of the Act

The term "employment" means • • • any service of whatever nature, performed after December 31, 1939, by an employee for the person employing him • • • except—

(5) Services performed on or in connection with a vessel not an American vessel. Certain services performed within the United States "on or in connection with a vessel not an American vessel" are in the employ of an employee for an individual in which case they are within the provisions of paragraph (a) of this section. Since the only services performed outside the United States which are also performed on or in connection with the vessel are services performed by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store who is a passenger on a vessel are not in connection with the vessel.

The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, store services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. (For definitions of "vessel" and "American vessel," see section 402.203 (c).)

Since the only services performed outside the United States which constitute employment are those described in section 402.203 (c) (relating to services performed outside the United States on or in connection with an American vessel),
The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii.

**SECTION 1426 (e) (8) of the Act**

The term "employment" means any service, of whatever nature, performed after December 31, 1930, by an employee for the person employing him except—

(8) Service performed by an employee in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, educational, athletic, testing service, or prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an instrumentality of the United States has certain religious purposes and also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the specified purposes.

If an organization has established its status under section 1426 (b) (3) of the Act, it need not thereafter make a return of any further statement with respect to its status under the Act unless it changes the character of its organization or operations or the purpose for which it was originally created.

**SECTION 1426 (a) (9) of the Act**

The term "employment" means any service, of whatever nature, performed after December 31, 1930, by an employee for the person employing him except—

(9) Service performed by an individual as an employee or employee representative as defined in section 1422. (Sec. 1425 (b) (7), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

**SECTION 1532 of the Internal Revenue Code**

As used in this subchapter [subsection B, chapter 9, Internal Revenue Code]—

(a) EMPLOYEE. The term "employee" means any carrier (as defined in subsection C) (except a railroad, water carrier, or air carrier) which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the usual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receiving, delivering, handling, or transportation, in transit, refrigeration or icing, storage, or handling of property transported, in connection with the transportation of passengers or property by railroad, if such controlling or owned carrier has not as a part of its business the performance of any service, of whatever nature, performed after December 31, 1930, by an employee for any person employing him.
within the terms of this proviso. The term "employer" shall also include railroad associations, stock companies, joint-stock companies, general committees and their insurance de-
cisions, established pursuant to the constitution and
(b) Employees. The term "employee" means any person in the service of one or more employers as herein-
practices in effect on the carrier: Provided
ment relation to a carrier if he is on fur-
within the terms of this proviso. The term
(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part 5 of the
-Service performed by an individual as an "employee" or as an "em-
the basis of either the quantity or the
The term "employee" includes an officer
who is on the
The term "employee" includes an officer of an employer.
(c) Employee representative. The term "employee representative," or official representative of a railway labor organization other than a labor organization included in the definition of "employee" as defined herein, means any person in the service of one or more employers as herein-
without the United States if he is subject to the continuing authority of the United States and in direct or indirect
services, which service he renders, for compensation: Provided, however, That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendered service to it in the manner fixed by its office.
for the purpose of purchasing supplies or equipment from the United States at lower prices for the benefit of its members or for the benefit of persons who are not entitled or permitted to participate, as owner, in the profits of the corporation, upon dissolution or otherwise.
27,
the period in which he renders service to it prior to said date, he rendered service to it in the period
in connection with the duties of his office.
(d) Service. An individual is in the service of an employer when he renders service without the United States if he is subject to the continuing authority of the United States and in direct or indirect
of the purchases made for persons who are not members or producers does not exceed the legal rate of interest in the State of incorporation of an amount which is not less than 5 per centum or more of the
as a cemetery corporation and not permitted by its charter to engage in any business, income and equipment for the use of members or other persons, and turning over such sup-
any such association, upon dissolution or otherwise, shall es-
subject to the provisions of the State or incorporation Act, 44 Stat.
being earned in the roll period in which he rendered service to it.
the term "employee" as defined in subsection (a) only.
but only if the 
"employee representative" means any officer or official representative in connection with the duties of his office.
any such association because there is not exceeded the legal rate of interest in the State of incorporation of an amount which is not less than 5 per centum or more of the
(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part 5 of the
the basis of either the quantity or the
The term "employer" includes an officer or official representative of a railway labor organization other than a labor organization included in the definition of "employee" as defined herein.
without the United States if he is on the
"employee" as defined herein.
within the terms of this proviso.
"employee" as defined herein.
within the terms of this proviso.
within the terms of this proviso.
within the terms of this proviso.
within the terms of this proviso.
unnecessarily incident to that pur-
Section 1426 (b) (10) (A) of the Act
income tax under section 101.
the value of the products furnished by them, or the purchase of
bility, all in accordance with the established practices in effect on the carrier: Provided further, That an individual shall not be deemed to be in the service of a United States association established for the purpose of purchasing supplies or equipment from the United States at lower prices for the benefit of its members or for the benefit of persons who are not entitled or permitted to participate, as owner, in the profits of the corporation, upon dissolution or otherwise.
the term "employee" as defined in subsection (a) only.
within the terms of this proviso.
within the terms of this proviso.
within the terms of this proviso.
within the terms of this proviso.
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within the terms of this proviso.
there is accumulated and maintained by 15 a reserve the law or an appropriate reserve for any necessary purpose; 16
(14) Corporations organized for the ex- 17 clusive purpose of holding title to property 18 collecting income therefrom, and turning 19 over the entire amount thereof, less expenses 20 to an organization itself exempt from the 21 tax imposed by this chapter;
(15) Corporations organized under Act 22 of Congress and generally accepted tests 23 of the United States and if 24 under such Act, as amended and supple- 25 mented, the provisions of such laws are exempt from Federal income taxes; 26 27
(17) Teachers' retirement fund associa- 28 tions of the local character, if (a) no 29 part of their net earnings inures (other than 30 through payment of retirement benefits) 31 to the benefit of any private shareholder 32 or individual, and (b) the income consists 33 solely of amounts received from public tax- 34 functions. amounts received from assessment upon the teaching salaries of members, and income in respect of investments;
(18) Religious or apostolic associations 35 of corporations, if such associations or cor- 36 porations have a common treasury or common treasury, even if such associations or cor- 37 porations engage in business for the common benefit of the members, but only if the members have no control (at the time of 38 filing their returns) in their gross income 39 their entire pro-rata share of undistributed 40 income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(See 101, I.R.C., as amended by sec. 217, Revenue Act of 1929.)

§ 402.217 Organizations exempt from income tax—(a) In general. This section deals with the exception of services performed in the employ of certain corporations exempt from income tax under section 101 of the Internal Revenue Code. If the services meet the tests set forth in paragraph (b), (c), or (d), such services are excepted.

(See also section 402.215 for provisions relating to the exception of services performed in the employ of religious, charitable, scientific, literary, and educational organizations and community chests or funds described in section 101 (6) of the Internal Revenue Code; section 402.218 for provisions relating to the exception of services performed in the employ of agricultural and horticultural organizations exempt from income tax under section 101 (1) of the Code; section 402.219 for provisions relating to the exception of services performed in the employ of voluntary employees' beneficiary associations of the type described in section 101 (16) of the Code; and sec. 402.221 for provisions relating to the exception of services performed in the employ of Federal employees' beneficiary associations of the type described in section 101 (19) of the Code.)

(b) Remuneration not in excess of $45 for calendar quarter. Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services does not exceed $45. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of three months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example 1. X is a local lodge of a fraternal organization and is exempt from income tax under section 101 (3) of the Internal Revenue Code. X has two paid employees, A, who serves exclusively as recording secretary for the lodge, and B, who performs services for the lodge as janitor of its clubhouse. For services performed during the calendar quarter of 1940 (that is, January 1, 1940, through March 31, 1940, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter does not exceed $45, all of such services are excepted, and the tax does not attach with respect to any of the remuneration for such services. Since the remuneration for the services performed by B during such quarter, none of such services are excepted, and the tax attaches with respect to all of the remuneration for such services (that is, $180) as and when paid.

Example 2. The facts are the same as in example 1, above, except that on April 1, 1940, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1940, through June 30, 1940, both dates inclusive) A earns a total of $50. Although all of the services performed by A during such quarter are excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services exceeds $45. The tax attaches with respect to all of the remuneration for services performed during the second quarter (that is, $60) as and when paid.

Example 3. The facts are the same as in example 1, above, except that A earns $120 for services performed during the year 1940, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter does not exceed $45. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year exceeds $45, the services during that quarter are not excepted, and the tax attaches with respect to that portion of the remuneration attributable to his services in that quarter.

(c) Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies. The following services performed in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 101 of the Internal Revenue Code are excepted:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and
(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) Students employed by organizations exempt from income tax. Services performed in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code by a student who is enrolled and is regularly attending classes at a school, college, or university are excepted. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

The term "school, college, or university" within the meaning of this exception is to be taken generally or commonly accepted sense.

For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see section 402.223.

SECTION 1456 (a) (10) (B) OF THE ACT

The term "employment means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for his employer * * *

(10) (B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1); section 101 (2); section 101 (10) I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

SECTION 101 (1) OF THE INTERNAL REVENUE CODE

The following organizations shall be except exempt from taxation under this chapter:

(1) * * * agricultural, or horticultural organizations;
§ 402.218 Agricultural and horticultural organizations exempt from income tax. Services performed by an employee in the employ of an agricultural or horticultural organization exempt from income tax under section 101, after December 31, 1939, are excepted. The Internal Revenue Code are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

Section 1426 (a) (10) (D) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee for the person employing him • • • except—

(10) (D) Service performed in any calendar quarter by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such services does not exceed $45 (exclusive of room, board, and tuition); (Sec. 1426 (b) (10), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.221 Students employed by schools, colleges, or universities not exempt from income tax. Services performed in a calendar year by a student in the employ of a school, college, or university not exempt from income tax under section 101, after December 31, 1939, by an employee for the person employing him • • • except—

(10) (E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such services does not exceed $45 (exclusive of room, board, and tuition); (Sec. 1426 (b) (10), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.219 Voluntary employees’ beneficiary associations. Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (C) of the Act are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

Section 1426 (a) (10) (D) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee for the person employing him • • • except—

(10) (C) Service performed in the employ of a voluntary employees’ beneficiary association providing for the payment of life, sickness, accident, and other benefits to the members of such association or their dependents, if (1) no part of its net earnings inures (other than through payments to the benefit of any private shareholder or individual) and (2) 85 per centum or more of the amount of contributions made by members for the sole purpose of making such payments and meeting expenses; (Sec. 1426 (b) (10) (C), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.219 Voluntary employees’ beneficiary associations. Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (C) of the Act are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

Section 1426 (a) (10) (D) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee for the person employing him • • • except—

(10) (D) Service performed in the employ of a voluntary employees’ beneficiary association providing for the payment of life, sickness, accident, and other benefits to the members of such association or their dependents, if (1) no part of its net earnings inures (other than through payments to the benefit of any private shareholder or individual) and (2) 85 per centum or more of the amount of contributions made by members for the sole purpose of making such payments and meeting expenses; (Sec. 1426 (b) (10) (C), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.220 Federal employees’ beneficiary associations.—Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (D) are excepted.

For purposes of the exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

Section 1426 (a) (10) (E) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee in the employ of a person for the person employing him • • • except—

(10) (E) Service performed in any calendar quarter in the employ of an organization, exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition); (Sec. 1426 (b) (10), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.222 Students employed by schools, colleges, or universities not exempt from income tax. Services performed in a calendar year by a student in the employ of a school, college, or university not exempt from income tax under section 101, after December 31, 1939, by an employee for the person employing him • • • except—

(10) (E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition); (Sec. 1426 (b) (10), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.223 Wholly owned instrumentalities of a foreign government. Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, provided—

(1) The instrumentality is wholly owned by the foreign government; and

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whom the instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial.*

Section 1426 (a) (13) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee in the employ of a person for the person employing him • • • except—

(13) (D) Service performed by a student in the employ of a foreign government, or of a non-diplomatic representative thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.*

Section 1426 (a) (12) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee in the employ of a person for the person employing him • • • except—

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof; (Sec. 1426 (b) (12), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.223 Wholly owned instrumentalities of a foreign government. Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, provided—

(1) The instrumentality is wholly owned by the foreign government; and

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whom the instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial.*

Section 1426 (a) (13) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee in the employ of a person for the person employing him • • • except—

(13) (D) Service performed by a student in the employ of a foreign government, or of a non-diplomatic representative thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial.*

Section 1426 (a) (12) of the Act

The term “employment” means • • • any service, of whatever nature, performed by an employee in the employ of a person for the person employing him • • • except—

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof; (Sec. 1426 (b) (12), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)
§ 402.224 Student nurses and hospital internes. Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted provided the student nurse is enrolled and regularly attending classes in a nurses' training school, and such nurses' training school is chartered or approved pursuant to State law.

Services performed as an interne (as distinguished from a resident doctor) in the employ of a hospital are excepted provided the interne has completed a four years' course in a medical school chartered or approved pursuant to State law.*

Section 1426 (a) (14) of the Act

The term "employment" means any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him except—

(14) Service performed by an individual in (a) or as an officer or member of the crew of any vessel engaged in fishing, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustaceans, sponges, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut for commercial purposes, nor the services of any other individual in connection with such activity, are excepted. Thus, the services of any such individual in the employ of a hospital are excepted as services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, or, the services of any other individual in connection with such activity, are within the exception.

(b) Vessels of more than 10 net tons. Services described in paragraph (a) performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.*

Section 1426 (b) (10) of the Act

The term "employment" means any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, except—

(10) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, including delivery by any means to an appointed point for subsequent delivery or distribution. (Sec. 1426 (b) (10), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.226 Delivery and distribution of newspapers and shopping news. Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, are excepted. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery of newspapers or shopping news, including delivery by any means to an appointed point for subsequent delivery or distribution, are excepted. The exception continues only during the time that the employee is under the age of 18.*

Section 1426 (A) of the Act

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to $1,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such employer with respect to employment during such calendar year.

(2) The amounts of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for the employer alone, or for his spouse generally, or for a class or classes of his employees (including any amount paid by an employer for insurance for his spouse generally, or for his class of employees, paid by such employer to provide for any such payment), on account of (a) death, (b) accident, (c) disability, (d) retirement, (e) sickness, (f) hospitalization expenses in connection with sickness or accident, (g) death, if the employee (1) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums paid therefor by the employer, and (h) has not the right, under the provisions of the plan or system or policy of insurance, to elect to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from employment, or upon termination of any service, of whatever nature, performed after December 31, 1939, by an employee under a State unemployment compensation law; or

(3) Direct payments which the employee is not legally required to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of the term "wages" such amount shall be considered to have been paid to the employee at the time of such deduction.

§ 402.227 Wages—(a) In general.

Whether remuneration paid on or after January 1, 1940, for employment performed after December 31, 1939, constitutes wages is determined under section 1426 (a) of the Act, that is, section 1426 (a), as amended, effective January 1, 1940, by sec. 606 of the Social Security Act Amendments of 1939. This section of these regulations (section 402.228 (relating to exclusions of wages) applies with respect only to remuneration paid on or after January 1, 1940, for employment performed after December 31, 1939. Whether remuneration paid prior to January 1, 1940, for employment performed after December 31, 1939, constitutes wages shall be determined in accordance with the applicable provisions of Regulations 91.

The term "wages" means all remuneration for employment unless specifically excepted under section 1426 (a) of the Act. (See section 402.228)

The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages within the meaning of the Act if paid as compensation for employment.

The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

The medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, such as house, real or personal property, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

Ordinarily, facilities or privileges (such as entertainment, medical services, or
so-called “courtesy” discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment. However, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

Remuneration for employment, unless such remuneration is specifically excepted under section 1426(a), constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employment the services were performed and the individual who performed them.

Example. A is employed by B during the month of January 1940 in employment A is entitled to receive the remuneration of $100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1940. On February 15, 1940 (when A is no longer an employee of B, B pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages within the meaning of the Act, and the tax is payable with respect thereto.

(b) Certain items included as wages—
(1) Vacation allowances. Amounts of so-called “vacation allowances” paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(2) Traveling expenses. Amounts paid to traveling salesman or other employees or reimbursed for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer. Thus, the wages of a salesman, who is employed on a straight salary basis with an allowance to cover all necessary expenses incurred in the employer’s business, are computed by adding to the salary the amount of the excess, if any, of the expense allowance over the expenses actually incurred and accounted for by the employee to the employer.

(3) Deductions by an employer from wages of an employee. The amount of any tax which is required by section 1401(a) of the Act to be deducted by the employer from the wages of an employee is considered to be a part of the employee’s wages, and is deemed to be paid to the employee as wages at the time that the deduction is made. Other amounts deducted from the wages of an employee by an employer also constitute wages paid to the employee at the time of the deduction. It is immaterial that the Act, or any Act of Congress, or the law of any State, requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 402.228 Exclusions from wages—(a) $3,000 limitation. The term “wages” does not include that part of the remuneration paid by an employer to an employee for employment performed for him during any calendar year which exceeds the first $3,000 paid by such employer to such employee for employment performed during such calendar year.

The $3,000 limitation applies only if the remuneration received by an employee from the same employer for employment during any one calendar year exceeds $3,000. The limitation relates to remuneration received during any one calendar year and is subject to the amount of remuneration (irrespective of the year of employment) which is paid or received in any one calendar year.

Example 1. Employee A, in 1940, receives $2,500 from employer B on account of $3,000 due him for employment performed in 1940. In 1941 A receives from employer B the balance of $500 due him for employment performed in the prior year (1940) and also $3,000 for employment performed in 1941. Although A actually receives total remuneration of $3,500 during the calendar year 1941, that entire amount is subject to tax, that is, $3,000 with respect to employment during 1941 and $500 with respect to employment during 1940 (this $500 is the excess of the paid in 1940 constitutes the maximum wages which could be received from any one employer by A with respect to employment during the calendar year 1940).

If the employee has more than one employer during a calendar year, the limitation of wages to the first $3,000 of remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment during that year, but instead to the remuneration received from each employer with respect to employment during that year. In such case the first $3,000 received from each employer constitutes wages and is subject to the tax, even though, under section 1401(d) of the Act, the employee may be entitled to a refund of any amount of employees’ tax deducted from his wages and paid to the collector which exceeds the employees’ tax with respect to the first $3,000 of wages received for services performed during such year. In this connection, contrary to the two examples immediately following, see section 402.705, relating to special refunds of employees’ tax on wages over $3,000.

Example 2. Employee C receives from employer D a salary of $600 a month for employment by D during the first seven months of 1940, or total remuneration of $4,200. C has received $3,000 from employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The $600 received by employee C from employer D for employment during the seventh month, and the like amount received for employment during the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. C receives remuneration of $600 a month from employer E for the remaining five months of 1940, or total remuneration of $3,000 from employer E. The entire $3,000 received by C from employer E constitutes wages and is subject to the tax. Thus, the first $3,000 received from employer D and the entire $3,000 received from employer E constitutes wages.

Example 3. F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation during the calendar year 1940 and receives a salary of $3,000 from each corporation. Each $3,000 received by F from each of the corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the tax.

(b) Employers’ plans providing for payments on account of retirement, sickness or accident disability, medical and hospitalization expenses, or death. Under section 1426(a) (2) of the Act, the term “wages” does not include the amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(1) retirement,
(2) sickness or accident disability,
(3) medical and hospitalization expenses in connection with sickness or accident disability, or
(4) death, provided the employee has not the option to receive, instead of provisions for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premium or contribution (or both) paid by his employer, and (d) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit, either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer.

The plan or system established by an employer need not provide for payments...
on account of all of the specified items, but such plan or system may provide for any one or more of such items.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee’s remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(c) Payment by an employer of employees’ tax or employees’ contributions under a plan where the employer does not include the amount of any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (1) the employees’ tax imposed by section 1400 of the Act, or (2) any payment and no account is kept by the employer under a State unemployment compensation law.

(d) Dismissal payments. Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, are excluded from “wages” provided the employer is not legally bound by contract, statute, or otherwise, to make such payments.

(e) Miscellaneous. In addition to the exclusions specified in paragraphs (a), (b), (c), and (d), the following types of payments are excluded from wages:

1. Remuneration for services which do not constitute employment under section 1426 (b) of the Act.
2. Remuneration for services which are not deemed to be employment under section 1426 (c) of the Act.
3. Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.*

SUBPART C—EMPLOYEES’ TAX

SEC. 1400 OF THE ACT

In addition to other taxes, there shall be levied, collected, and paid upon the income from wages received on or after January 1, 1940, with respect to employment on or after January 1, 1937, the following types of taxes:

(a) Remuneration. The tax imposed by section 1400 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages when paid.

(b) Identification of employer. Every employer required to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

SEC. 3601 OF THE INTERNAL REVENUE CODE

Whenever any person is required to collect or withhold any internal-revenue tax from any wages paid to such person, the amount of such tax so collected or withheld shall be held to be a special fund in trust for the United States, the amount of which fund shall be assessed, collected, and paid in the manner provided in section 3600 of the Act. The rules and limitations (including penalties) applicable to the collection of such fund are as specified in the Act.
Any employer who willfully fails to furnish a covered statement to any employee at the time any calendar quarter, in lieu of a statement to any employee furnished by the employer, may, at his option, furnish such a statement to the employee. The statement shall be furnished on the day on which the last payment of wages was made to the employee, whether or not within the same calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the total payment of wages, in lieu of the period covered by the statement.

(b) Paid wages must be furnished. Any employer who willfully fails to furnish a statement to an employee in the manner, at the time, and in the form required under subsection (a), shall be subject to a civil penalty of not more than $5 for each such failure. Every employer shall furnish to each of his employees a written statement of wages paid during any calendar quarter, showing the amount of wages paid during such period, the name of the employee, and the period covered by the statement.

§ 402.306 Statements for employees. Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing with respect to wages paid by him to the employee on or after January 1, 1940, for employment on or after January 1, 1937, (1) the name of the employer, (2) the name of the employee, (3) the period covered by the statement, (4) the total amount of wages paid during such period, and (5) the amount of 'employers' tax with respect to such wages. Each statement shall cover a calendar year, or one, two, three, or four calendar quarters, whether or not within the same calendar year. A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31. The statement shall be furnished to the employee not later than the last day of the second calendar month following the period covered by the statement, except that, if the employee leaves the employ of the employer, the final statement shall be furnished on the day on which the last payment of wages is made to the employee. The employer may, at his option, furnish such a statement to any employee at the time of each payment of wages to the employee, or at the time of any calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the total payment of wages, in lieu of the period covered by the statement. No particular form is prescribed for the statement required to be furnished to employees under this section.

Section 1403 of the Act prescribes a civil penalty of not more than $5 for each willful failure of an employer to furnish the required statement to an employee.

SUBPART D—EMPLOYERS' TAX

SECTION 1410 OF THE ACT

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages paid by the employer to the employees in the years 1939, 1940, 1941, and 1942, the rate shall be 1 per cent.

(2) With respect to wages paid during the calendar years 1943, 1944, and 1945, the rate shall be 2 per cent. The employers' tax is measured by the amount of wages actually or constructively paid on or after January 1, 1940, with respect to employment on or after January 1, 1937. (See sections 402.203 and 402.204, relating to employment, and sections 402.227 and 402.228, relating to employers' tax.)

§ 402.403 Rates and computation of employers' tax. The rates of employers' tax applicable for the respective calendar years are as follows:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1940, 1941, and 1942</td>
<td>1%</td>
</tr>
<tr>
<td>1943, 1944, and 1945</td>
<td>2%</td>
</tr>
</tbody>
</table>

The employers' tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

§ 402.403 When employers' tax attaches. The employers' tax attaches at the time that the wages are either actually or constructively paid by the employer. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or collection and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition. (See section 402.363, relating to the time the employees' tax attaches.)

§ 402.404 Liability for employers' tax. The employer is liable for the employers' tax with respect to the wages paid to his employees for employment performed for him.

§ 402.405 Manner and time of payment of employers' tax. The employers' tax is payable to the collector in the manner and at the time prescribed in section 402.607.

SUBPART E—IDENTIFICATION OF TAXPAYERS

SECTION 1420 (A) AND (C) OF THE ACT

(a) Administration. The taxes imposed by this subchapter are collected by the Bureau of Internal Revenue under the direction of the Commissioner and shall be paid into the Treasury of the United States as internal-revenue collections.

SEC. 1390 OF THE ACT

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2709 or section 1600, and the provisions of this subchapter, may be applied in such manner and to such extent as may be prescribed by the Commissioner, with the approval of the Secretary of the Treasury.

§ 402.501 Employers' identification numbers. Every person who on or after January 1, 1940, has in his employ one or more individuals in employment for wages, but who prior to such date has neither secured an identification number nor made application therefor, shall make an application, in duplicate, on Form SS-4 for an identification number. Each application, together with any supplementary statement, shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employer shall file the application either with the nearest field office of the Social Security Board in the State in which his principal place of business is located or with the collector for the district in which such place of business is located, or, if the employer has no place of business within the United States, with the office of the Social Security Board at Baltimore, Md. The application shall be filed on or before the seventh day after the date on which employment for wages for such employer first occurs. Copies of Form SS-4 may be obtained from any field office of the Social Security Board or from any collector. Each application shall be signed by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or unincorporated association; or (4) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of information reported on the applica-
tion required under this section. Identification numbers assigned to employers shall show their records, returns, and claims to the extent required by sections 402.605 and 402.609, by the instructions relating to Form SS-1a, and by section 402.704.

§ 402.502 Employees' account numbers. Every individual who on or after January 1, 1940, is in employment for wages, shall have his account number as soon as practicable.

(a) Duties of employer if account number not assigned to or known by employee when hired. If, when an employee enters the employ of any employer for wages, the employer fails to advise him of an account number card, such an account number card shall be furnished him by the employer as promptly as possible, if possible, by showing his account number card or number to the employer. The account number assigned to an employee (or the number as changed), in accordance with section 402.502 shall be used by him even though he enters the employ of other employers.

(b) Duties if account number not assigned to or known by employee when hired. If, when an employee enters the employ of any employer for wages, the employer for any reason does not know what his name or account number is as shown on an account number card, he shall in every case advise the employer what his name and account number are in accordance with paragraph (a) as soon as they are known to him, whether or not at that time he is still in the employ of that employer.

In any case where the employee has not previously advised the employer what his name and account number are as shown on his account number card, the employee shall, on the fourteenth day after the date on which the employee first performs employment for wages for the employer, or on the date on which he leaves the employ of the employer, whichever is the earlier, comply with subparagraph (1) or (2) below:

(1) If the employee has available a receipt issued to him by an office of the Social Security Board acknowledging that an application for an account number has been received, the employer shall show such receipt to the employer.

(2) If the employee does not have available a receipt issued to him by an office of the Social Security Board acknowledging that an application for an account number has been received, the employee shall furnish to the employer an application on Form SS-5, completely filled in and signed by the employee. If a copy of Form SS-5 is not available, the employer shall retain the form issued to him by an office of the Social Security Board and, in lieu thereof, the employer shall enter in his records with respect to such event the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the employee exactly as shown in the receipt. The receipt shall be retained by the employer.

If, however, the employee furnishes to the employer, as provided in section 402.503(b)(1), an executed Form SS-5 or statement in lieu thereof, the employer shall retain the form or statement for disposition as provided below.

In any case in which the employee's account number is for any reason unknown to the employer at the time the employee's return on Form SS-1a is filed for any quarter during which the employee receives wages from such employer—

(1) If the employee has shown to the employer, as provided in section 402.503(b)(1), a receipt issued by the Social Security Board acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown in the receipt, the date of issue of the receipt, and the address of the issuing office; or

(2) If the employee has furnished to the employer, as provided in section 402.503(b)(1), an executed Form SS-5 or statement in lieu thereof, the em-
employer shall attach such form or statement to the return; or

(3) If neither (1) nor (2) above is applicable, the employer shall attach to the return a signed statement signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the employee's sex and color, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such Form SS-5 or statement an explanation of why he has not so far received from the employee a Form SS-5 or statement signed by the employee as provided in section 402.503 (b) (2), and shall insert the word "Employer" as part of his signature.

If the employee advises the employer what his name and account number are as shown on his account number card prior to the time the employer's return on Form SS-5 is filed and the employer enters such name and number on the return, the employer shall return to the employee any executed Form SS-5 or statement in lieu thereof furnished by the employer in accordance with section 402.503 (b) (2).

(b) Prospective employees. While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number what the requirements of sections 402.502 and 402.503 are.

SUBPART F—RETURNS, PAYMENT OF TAX, AND RECORDS

Section 2709 of the Internal Revenue Code, Made Applicable by Section 1430 of the Act

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may prescribe.

Section 2701 of the Internal Revenue Code, Made Applicable by Section 1430 of the Act

Every person liable for the tax * * * shall make * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

Section 2703 of the Internal Revenue Code, Made Applicable by Section 1430 of the Act

(b) METHOD OF COLLECTION AND PAYMENT

Such taxes shall be collected and paid in such manner, at such times, and under such conditions, as the Commissioner of Internal Revenue shall by regulation prescribe.

(c) METHOD OF COLLECTION AND PAYMENT

Such taxes shall be collected and paid in such manner, at such times, and under such conditions, as the Commissioner of Internal Revenue shall by regulation prescribe.

Section 2702 of the Internal Revenue Code, Made Applicable by Section 1430 of the Act

Date of Payment. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector for the district in which is located the principal place of business, at the time fixed * * * for filing the return.

§ 402.601 Tax and information returns.

Every employer shall make a tax and information return on Form SS-5 for the first quarter after December 31, 1939, within which wages are paid to his employee or employees, and for each subsequent quarter (whether or not wages are paid therein) until he files a final return as required by the provisions of section 402.603. One original return shall be filed with the collector. For purposes of returns under the Act, quarters shall each be three calendar months as follows: (1) from January 1 to March 31, both dates inclusive; (2) from April 1 to June 30, both dates inclusive; (3) from July 1 to September 30, both dates inclusive; and (4) from October 1 to December 31, both dates inclusive.

§ 402.602 When to report wages.

Wages shall be reported in the tax return for the period in which they are actually paid unless they were constructively paid in a prior tax-return period, in which case wages shall be reported in the return for such prior period; except that if wages actually or constructively paid before January 1, 1943, for a pay-roll period ending within a tax-return period prior to October 1, 1942, are so paid after such return period but before the return for such period is filed, the employer may report such wages in the return for such period.
§ 402.603 Final returns. The last return on Form SS-1a for any employer who ceases to pay wages shall be marked “Final return” by the employer or the person filing the return. Such final return shall be filed with the collector on or before the thirtieth day after the date on which the final payment of wages is made for services performed for the employer, and shall plainly show the period covered and also the date of the last payment of wages. There shall be executed as final return a statement, in duplicate, giving the address at which the records required by section 402.609 will be kept, the name of the person keeping such records, and, if the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact shall be stated in the statement. The employer who has only temporarily ceased to pay wages, including an employer employed in seasonal activities, shall continue to file returns, but shall enter on the face of any return on which no wages are required to be reported the date of the last payment of wages and the date when he expects to resume paying wages to one or more employees. * § 402.604 Execution of returns. Except as provided in this section, each return shall be signed and verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (4) the fiduciary, if the employer is a trust or estate. The employer’s return may be executed by an agent in the name of the employer if an acceptable power of attorney is filed with the collector, and if such return includes the wages paid to all employees of the employer for the period covered by the return.

The oath or affirmation may be administered by any person duly authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. Each return may be attested true copy, by or for any proper officer having knowledge of the appointment and official character of the attesting officer. This section is not an exclusive enumeration of the persons who may administer oaths or affirmations.

If the sum of the employees’ tax and the employers’ tax shown to be payable by any return on Form SS-1a is $10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.

§ 402.605 Use of prescribed forms. Copies of the prescribed return forms will so far as possible be regularly furnished, without application therefor. An employer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Employers not supplied with the proper forms shall make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. (See section 402.605, relating to the place and time for filing returns; see also section 402.603, relating to final returns.) If the prescribed form is not available, a statement made by the employer disclosing the amount of wages paid during the period for which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time, the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 3012 (d) (1) of the Internal Revenue Code (see section 402.804 (a)), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form.

Each return, together with a copy thereof and any supporting data, shall be filed in and disposed of in accordance with the instructions and regulations applicable thereto. (See section 402.603, relating to the place and time for filing returns, and section 402.609 (c) and (e), relating to copies of returns, schedules, and statements, and to the place and period for keeping records.) The return shall be filed fully and accurately to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the Act. Only one return for a tax-return period shall be filed by or for an employer. Any supplemental return filed for such period in accordance with section 402.702 or 402.703 shall constitute a part of such return. Consolidated returns of parent and subsidiary corporations are not permitted.

If in a return, or in any other manner, the employer fails to report, or incorrectly reports, to the collector, the name, account number, or wages of an employee, the employer shall fully advise the collector of the omission or error by a return and shall have made application for a credit, refund, or abatement, within seven months after the date the correct data are ascertained. The employer shall include in such letter his identification number, each tax-return period for which the data were omitted or for which the incorrect data were furnished, the data omitted or incorrectly reported for each period, and the data which should have been reported. A copy of such letter shall be retained by the employer as a part of his records. * § 402.606 Place and time for filing returns. Each return shall be filed with the collector for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, with the collector at Baltimore, Md. Except as provided in section 402.605, each return shall be filed on or before the last day of the first month following the period for which it is made. If the last day for filing any return falls on a Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall have ample time to reach the collector’s office, under ordinary handling of the mails, on or before the due date. As to additional penalties for failure to file a return within the prescribed time, see section 402.804. See also section 2707 of the Internal Revenue Code, relating to penalties. * § 402.607 Payment of tax. The employees’ tax and the employers’ tax required to be reported on each return on Form SS-1a are due and payable to the collector, without assessment by the Commissioner or notice by the collector, at the time fixed for filing such return. For provisions relating to interest, additions to tax, and penalties, see sections 402.602, 402.803, and 402.804 of these regulations and section 2707 of the Internal Revenue Code.

§ 402.608 When fractional part of cent may be disregarded. In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See section 402.304 for provisions relating to fractional parts of a cent in connection with the deduction of employees’ tax from wages.

§ 402.609 Records.—(a) Records of employers. Every employer liable for tax shall keep accurate records of all remuneration (whether in cash or in a medium other than cash) paid to his employees after December 31, 1939, for services performed for him after December 31, 1936. Such records shall show with respect to each employee—

(1) the name, address, and account number of the employee (see section 402.504, relating to account numbers), and such additional information with respect to the employee as is required by
section 402.504 (a) when the employee
which an employer has repaid to an
on an account number card issued to the
employee by the Social Security Board,
(2) the total amount (including any sum withheld therefrom as tax or for
any other reason) and date of each re-
muneration payment and the period of
services covered by such payment,
(3) the amount of such remuneration
payment which constitutes wages sub-
ject to tax (see sections 402.227 and
402.229), and
(4) the amount of employees' tax
withheld or collected with respect to
such payment, and if collected at a
time other than the time such payment
was made, the date collected.

If the total remuneration payment
(2), above) and the amount thereof
which is taxable (item (3) above) are not equal, the reason therefor,
shall be made a matter of record in the
details of each adjustment or settlement made
pursuant to section 402.702 or 402.703 shall
also be kept.

No particular form is prescribed for
keeping the records required by this
paragraph (a). Each employer shall use
such forms and systems of accounting as
will enable the Commissioner to ascertain
whether the taxes for which the em-
ployer is liable are correctly computed
and paid.

(b) Records of employees. While not
mandatory, it is advisable for each em-
ployee to keep permanent, accurate
records showing the name and address
of each employer for whom he performs
services— as an employee, the dates of
beginning and termination of such serv-
ces, the information with respect to
himself which is required by paragraph
(a) to be kept by employers, and the receipts furnished in ac-
cordance with the provisions of section
402.506. (See, however, paragraph (d),
relating to records of claimants)
(c) Copies of returns, schedules, and
statements. Every employer who is re-
quired, by these regulations or by instruc-
tions applicable to any form prescribed
under these regulations, to keep any copy
of any return, schedule, statement, or
other document, shall keep such copy as
part of his records.
(d) Records of claimants. Any person
(including an employee) claiming refund,
credit, or abatement of any tax, penalty,
or interest shall keep a complete and de-
tailed record with respect to such tax,
penalty, or interest.
(e) Place and period for keeping
records. Old records required by these
regulations shall be kept, by the person
required to keep them, at one or more
convenient and safe locations accessible
to internal revenue officers. Such records
shall at all times be open for inspection
by such officers. If the employer has a
principal place of business in the United
States, the records required by para-
graphs (c) and (d) of this section shall be
kept at such place of business.

Records required by paragraphs (a)
and (c) of this section shall be main-
tained for a period of at least four years
after the date the tax to which they re-
late becomes due, or the date the tax is
paid, whichever is the later. Records
required by paragraph (d) of this section
(including any record required by para-
graph (a) or (c) which relates to a claim)
shall be maintained for a period
of at least four years after the date the
claim is filed.

SUBPART G—ADJUSTMENTS, CLAIMS, AND
ASSESSMENTS

SECTION 1401 (c) OF THE ACT

If more or less than the correct amount of
tax imposed with respect to any payment of remuneration, proper
adjustments, with respect both to the tax and
amount of remuneration paid, shall be made, without interest, in such manner and at such
times as may be prescribed by regulations
made under this section. 1601 (c), I.R.C., as amended by sec. 603 (a), Social
Security Act Amendments of 1939.

SECTION 1411 OF THE ACT

If more or less than the correct amount of
tax imposed by section 1410 is paid with re-
spect to any payment of remuneration, proper
adjustments, with respect to the tax shall be
made, without interest, in such manner and to such
times as may be prescribed by regula-
tions made under this paragraph. (Sec.
1511, I.R.C., as amended by sec. 605, Social
Security Act Amendments of 1939.

§ 402.701 Adjustments in general.
Errors in the payment of employees' tax
and employers' tax must be adjusted in
certain cases without interest. Not all
corrections of erroneous collections or
payments of tax, however, constitute ad-
justments within the meaning of these
regulations. The various situations un-
der which such adjustments shall be
made are set forth in sections 402.702 and
402.703, the provisions of which also ap-
ply to settlement other than by adjust-
ment under certain circumstances set
forth therein. No underpayment of em-
ployees' tax or employers' tax shall be
reported pursuant to these sections after
receipt from the collector of notice and
demand for payment thereof based upon
an assessment, but the amount shall be
paid in accordance with such notice and
demand. Every return on which an ad-
justment or settlement is reported purs-
uant to section 402.702 or 402.703 must
have securely attached as a part thereof
a statement, in duplicate, explaining the
adjustment or settlement, designating the
tax-return period in which the error
was ascertained, and setting forth such
other information as may be required by
these regulations and by the instructions
relating to the return. If an adjustment
of an overcollection of employees' tax

§ 402.702 Adjustment of employees' tax—(a) Undercollections—(1) Prior to filing of return. If no employees' tax or
less than the correct amount of em-
ployees' tax is deducted from any pay-
ment of wages to an employee and the
error is ascertained prior to the time
the return on Form SS-1a is filed with the
collector for the period in which such
taxes are paid, the employer shall never-
these report on such return and pay to
the collector the correct amount of em-
ployees' tax. However, the reporting and
payment by the employer of the correct
amount of such tax in accordance with
this subparagraph do not constitute an
adjustment, and the amount shall not
be reported as an adjustment on the
return.

(2) After return is filed. If no em-
ployees' tax or less than the correct
amount of employees' tax with respect to
a payment of wages to an employee is
reported on a return and paid to the
collector, the employer shall adjust the
underpayment by (A) reporting the
additional amount due by reason of such
underpayment as an adjustment on a
return on Form SS-1a filed on or before
the last day of the first calendar month
following the tax-return period in which
the error is ascertained, or (B) report-
ing such additional amount on a supple-
mental return on Forms SS-1 or Form
SS-1a for the tax-return period in which
such payment of wages is made. The
reporting of such an underpayment on
a supplemental return constitutes an
adjustment within the meaning of this
subparagraph only when the supple-
mental return is filed on or before the
last day of the first calendar month
following a tax-return period in which
the error is ascertained. (See section
402.605, relating in part to supplemental
returns.) The amount of such under-
payment adjusted in accordance with
this subparagraph shall be paid to the
collector, without interest, at the time
fixed for reporting the adjustment. If
an adjustment is reported pursuant to
this subparagraph but the amount
thereof is not paid when due, interest
thereafter accrues.

If no employees' tax or less than
the correct amount of employees' tax with re-
spect to a payment of wages to an em-
ployee is reported on a return and paid
to the collector and such underpayment
is not reported as an adjustment within
the time prescribed by this subparagraph,
the amount of such underpayment shall
be (A) reported on the employer's next
return on Form SS-1a, or (B) reported
immediately on a supplemental return on
Form SS-1 or Form SS-1a. (For interest
accruing on amounts so reported, see sec-
tion 402.602)
(3) Deductions from employees. If an employer collects no employees’ tax or less than the correct amount of employees’ tax from an employee with respect to wages received by the employer, the employer shall collect the amount of the undercollection by deducting such amount from remuneration of the employee, if any, under his control after he ascertains the error. Such deductions may be made even though the remuneration is subsequently paid to the employee. (See sections 402.237 and 402.238 relating to wages.) If the employer ascertains the error prior to the time the return is required to be filed for the period in which such wages are paid, or if the employer ascertains the error subsequent to such time and the error is subject to adjustment under the provisions of subparagraph (2), the deduction of the amount of the undercollection in correction of such error shall be made without interest. The obligation of the employer to make such deductions for an undercollection of employees’ tax from the employee not subsequently corrected by a deduction made as required in the foregoing provisions of this subparagraph is a matter for settlement between the employee and the employer. The amount of the employees’ tax, in the case of a prior undercollection thereof from the employee, shall be reported and paid as provided in subparagraphs (1) and (2). Amounts deducted from remuneration of the employee, and other settlements between the employee and the employer, in correction of an undercollection of employees’ tax, shall be shown on statements furnished by the employer to the employee in accordance with section 402.305.

If an employer makes an erroneous collection of employees’ tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employees’ tax from one employee may not be used to offset an undercollection of such tax from another employee.

(b) Overcollections—(1) Prior to filing of return. If an employer (A) during any tax-return period collects more than the correct amount of employees’ tax from any employee, and (B) repays the amount of the overcollection to the employee prior to the time the return or Form SS-1a for such period is filed with the collector, and (C) obtains and keeps as part of his records the written receipt of the employee, showing the date and amount of the repayment, the employer shall not report on any return or pay to the collector the amount of the overcollection. However, every overcollection not repaid to and received for by the employee as provided in this subparagraph must be reported and paid to the collector with the return on Form SS-1a for the period in which the overcollection was made.

(2) After return is filed. If an employer collects from any employee and pays to the collector more than the correct amount of employees’ tax, the employer shall adjust the overcollection by repayment or reimbursing the employee in the amount thereof.

If the employer does not repay the employee, the employee shall reimburse the employer by applying the amount of the overcollection against the employer’s tax which attaches to wages paid to the employee prior to the expiration of the tax-return period following the tax-return period in which the error is ascertained. If the amount of the overcollection exceeds the amount so applied against such employees’ tax, the excess amount shall be repaid to the employee as required by this subparagraph.

An overcollection is adjustable under this subparagraph only if it is completed prior to the expiration of the tax-return period following the tax-return period in which the error is ascertained by the employer, and then only if the adjustment is reported on a return filed within the 4-year period after the date the overpayment was made to the collector. A claim for credit or refund (in accordance with section 402.704) may be filed within such 4-year period for any overcollection which cannot be adjusted under this paragraph.*

§ 402.703 Adjustment of employers’ tax—(a) Underpayments. If no employers’ tax or less than the correct amount of employers’ tax with respect to a payment of wages to an employee is reported on a return made as prescribed in the aforesaid paragraph, the employer shall adjust the underpayment by (A) reporting the additional amount due by reason of such underpayment as an adjustment on a return on Form SS-1a filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained, or (B) reporting such additional amount on a supplemental return on Form SS-1 or Form SS-1a for the tax-return period in which such payment of wages was made. The reporting of such an underpayment on a supplemental return constitutes an adjustment within the meaning of this section only when the supplemental return is filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained. (See section 402.605, relating in part to supplemental returns.) The amount of each underpayment adjusted in accordance with this paragraph shall be paid to the collector, without interest, at the time the return is filed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereon accrues.

If no employers’ tax or less than the correct amount of employers’ tax with respect to a payment of wages to an employee is reported on a return and paid to the collector and such underpayment is not adjusted in accordance with the provisions of this paragraph, the amount of such underpayment shall be (1) reported on the return on Form SS-1a, or (2) reported immediately on a supplemental return on Form SS-1 or Form SS-1a. (For interest accruing on amounts so reported, see section 402.602.)

(b) Overpayments. If (1) an employer pays more than the correct amount of employers’ tax with respect to any payment of remuneration, and (2) the employer is required under paragraph (b) of section 402.702 to adjust a corresponding overpayment of employers’ tax, he shall either (A) make a corresponding underpayment of employers’ tax or (B) reimburse the employee from whom such overpayment was made by deducting the amount of the overpayment from the amount of employers’ tax reported on such return or returns.

If an overpayment of employers’ tax is made in respect to a payment of remuneration to an employee, but no corresponding overpayment of employees’ tax is made with respect to the same payment of remuneration, the overpayment of employers’ tax is not adjustable under this paragraph. (See section 402.704, relating to refunds and credits.)

Section 1421 of the Act

If more than the correct amount of tax imposed by section 1421 or 1422, or deducted with respect to any wage payment and the overpayment of such tax cannot be adjusted under section 1421 (c) or 1411 the amount of the overpayment shall be refunded in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this subchapter.

Section 2703 (A) of the Internal Revenue Code, Made Applicable by Section 1450 of the Act

In general. In the case of any overpayment or underpayment of the tax on or before which the person making such overpayment or underpayment may take credit therefor against taxes due on any return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

Section 3770 (A) of the Internal Revenue Code

To Taxpayers—

(1) Assessments and Collections Generally. Except as otherwise provided by law in the case of income, estate, and gift taxes, the Commissioner, subject to regulations pre-
scribed by the Secretary, is authorized to re-
mit, refund, and pay back all taxes errone-
onously or illegally assessed or collected, at
penalty, without authority. All taxes that
appear to be unjustly assessed or exces-
sively in amount, or in any manner wrongly
collected.
(2) Assessments and collections after
expiration of term of limitation. In any case
in which a refund is claimed, the amount of
the tax, penalty, or interest due, if not pre-
viously assessed, may be assessed and collec-
ted in the manner prescribed by law. Any
amendment or assessment made after the ex-
piration of the period of limitation proper-
tly applicable to such tax shall be filed with
the collector, and shall be considered a
claim for refund of such overpayment or such
interest, except upon one or more of the
grounds set forth in a claim filed prior to
the expiration of such 4-year period. No
refund or credit of an overpayment will be
allowed if such overpayment is adjust-
able under section 402.702 or 402.703.
(c) Refund claims made by employ-
ees. If (1) more than the correct amount
of employees’ tax is collected
by an employer for refund, credit, or abate-
ment, the employee does not receive reimbursement in any
manner from such employer and does not
authorize the employer to file a claim
and receive refund or credit, such em-
ployee may file a claim for refund of such
overpayment. The employee shall
file a claim within 4 years from the date
of the payment of such overpayment, or of
the date the claim is filed with the
Secretary, if the latter is still acting.
If an executor, administrator, guardian,
trustee, receiver, or other fiduciary
makes a return and thereafter a refund
claim is made by a legal representative of the
decedent, certified copies of the letters tes-
tamentary, letters of administration, or
other similar evidence must be annexed
to the claim, to show the authority of the
executor, administrator, or other
fiduciary by whom the claim is made.
If an executor, administrator, guardian,
trustee, receiver, or other fiduciary makes
a return and thereafter a refund
claim is made by the fiduciary, docu-
ments, and such further evidence as will
show the authority of the fiduciary.
(d) Form of claims. Each claim for
refund or abatement under this section
shall be made on Form 843 in accordance
with these regulations and with the in-
structions relating thereto, and the ex-
ecutor, administrator, guardian,
trustee, receiver, or other fiduciary shall
designate the tax return period in
which the error was ascertained. Copies
of Form 843 may be obtained from any
employer. (For provisions requiring the
filing of a claim, see section 402.706.)
(e) Limitations on claims. No refund
or credit will be allowed after the ex-
piration of four years after the payment to
the collector of the tax, penalty, or in-
terest, except upon one or more of the
grounds set forth in a claim filed prior to
the expiration of such 4-year period. No
refund or credit of an overpayment will be
allowed if such overpayment is adjust-
able under section 402.702 or 402.703.
(f) powers of attorney. Any refund or
credit which does not comply with the
requirements of this section will not be
considered for any purpose as a claim
for refund, credit, or abatement.
(g) Proof of representative capacity. If a return is made by an individual who
previously died and a refund claim
is made by a legal representative of the
decedent, certified copies of the letters tes-
tamentary, letters of administration, or
other similar evidence must be annexed
to the claim, to show the authority of the
executor, administrator, or other
fiduciary by whom the claim is made.
If an executor, administrator, guardian,
trustee, receiver, or other fiduciary makes
a return and thereafter a refund
claim is made by the fiduciary, docu-
ments, and such further evidence as will
show the authority of the fiduciary.
(h) Limitations on claims. No refund
or credit will be allowed after the ex-
piration of four years after the payment to
the collector of the tax, penalty, or in-
terest, except upon one or more of the
grounds set forth in a claim filed prior to
the expiration of such 4-year period. No
refund or credit of an overpayment will be
allowed if such overpayment is adjust-
able under section 402.702 or 402.703.
(i) Claims filed by the Secretary. Any
refund under section 902 (1) of
Social Security Act Amendments of 1939
and section 2 of Act of August 11, 1939.
The provisions of this section shall apply
in the case of claims for refund with re-
spect to services described by section
902 (1) of the Social Security Act Amend-
ments of 1939, and section 2 of Act of
August 11, 1939 (53 Stat. 1420). (For
provisions relating to such services, see
section 402.202.)
If by reason of an employee rendering service for more than one employer during any calendar year after the calendar year 1939, the wages of the employee with respect to employment year exceeding $3,000 from such wages paid to the collector, which exceeds the tax with respect to the first $3,000 of such wages paid. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous collection of tax except that no such refund shall be made unless (1) the employee makes a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (2) such claim is filed within two years after the calendar year in which the wages are paid with respect to which refund of tax is claimed. No interest shall be allowed or paid with respect to any such refund. (See 1401 (d), I.R.C., as added by sec. 600 (b), Social Security Act Amendments of 1939)

§ 402.705 Special refunds of employees' tax on wages over $3,000. If an employee receives wages in excess of $3,000 from two or more employers for services performed during the calendar year 1940 or any subsequent calendar year, the employee may claim for refund of the amount, if any, by which the employee's tax deducted and paid to a collector with respect to such wages exceeds the employee's tax with respect to the first $3,000 of such wages. (See sections 402.227 and 402.228, relating to wages). Each claim shall be made within two years after the calendar year in which the employee performed services during such calendar year, (1) the name and address of such employer, (2) the account number of the employee and the employee's name as reported by the employer on his returns, (3) the amount of wages paid during the calendar year to which the claim relates for services performed by the employee during that year, (4) the amount of wages, if any, paid during each subsequent calendar year for services performed by the employee during the year to which the claim relates, (5) the amount of employees' tax, if any, deducted from such wages during each of such years and paid to the collector, and (6) the address of the collector to whom such tax was paid. Such information shall be furnished, if possible, in the form of statements made by the employers, each of which should include in his statement the fact that it is made in support of a claim against the United States to be filed by the employer for refund of employees' tax. If the statement of any employer is not submitted with the claim, the employee shall include in the claim an explanation of his inability to submit such statement. Other information may be required, but should be submitted only upon the receipt of a specific request therefor. The employee's claim shall be made on Form 843, in accordance with these regulations and the instructions relating to such form, and shall be filed with the collector for the district in which the employee resides. No interest will be allowed or paid by the Government on the amount of any refund under this section. No refund will be made under this section unless (1) the employee files a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (2) such claim is filed within two years after the calendar year in which the wages are paid with respect to which refund of tax is claimed.

Example. Employee A receives taxable wages in the amount of $3,000 from each of his employers, X, Y, and Z, for services performed during the calendar year 1942, or a total of $9,000 for such year. The first $3,000 of such wages is paid during the calendar year 1942 by employer X, who deducts employees' tax in the amount of $20 from A's wages, and pays such tax to the collector. The second $3,000 of such wages is paid during the calendar year 1942 by employer Y, who pays employees' tax in the amount of $20 to the collector without deducting such tax from A's wages. Employer Z pays $1,000 of such wages to A during the year 1942 and $1,000 during the year 1943. The rate of such tax for the year 1942 is 1 percent and the rate for 1943 is 2 percent. Employer Z deducts employees' tax in the amount of $30 from such wages ($10 during 1942 and $20 during 1943) and pays such tax to the collector. Thus, employees' tax in the total amount of $50 is deducted from A's wages and paid to a collector. The amount of employees' tax with respect to the first $3,000 of such wages is $30. A may file a claim for refund of $20.*

§ 402.706 Credit and refund of taxes paid for period during which liability existed under subchapter B of chapter 9 of the Internal Revenue Code. If any person pays any amount as tax under the Federal Insurance Contributions Act with respect to any period for which he is not liable for such tax and such person is liable for a tax imposed by subchapter B of chapter 9 of the Internal Revenue Code (which subchapter corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937), the amount paid as tax under the Federal Insurance Contributions Act shall be credited against the tax for which the person is liable for such subchapter and the balance, if any, shall be refunded. Each claim for refund under this section shall be made in accordance with section 402.704. Each claim for credit under this section shall be made on Form 843 in accordance with the instructions relating to such form and shall be filed within one calendar year of the dates of the events referred to in section 402.704 of these regulations. See section 1831 of subchapter B of chapter 9 of the Internal Revenue Code for credit or refund of amounts paid as tax under such subchapter for any period during which liability existed under the Federal Insurance Contributions Act.

§ 402.707 Assessment of underpayments. If any tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is otherwise allowable) against the employer opportunity to adjust the underpayment pursuant to section 402.702 or 402.703. Unpaid employers' tax or employer's tax may be assessed against the employer. Employees' tax not collected by the employer may also be assessed against the employer. The unpaid amount, together with interest and penalty, if any, will be collected, pursuant to section 3655 of the Internal Revenue Code and other applicable provisions of law, from the person against whom the assessment is made. In the assessment of employers' tax pursuant to an assessment against him without an adjustment having been made pursuant to section 402.702, reimbursement is a matter to be settled between the employer and the employee. See section 402.202, relating to interest, and section 402.203, relating to penalty for failure to pay an assessment after notice and demand. See also section 402.201, relating to jeopardy assessments.

SUBPART H—MISCELLANEOUS PROVISIONS

Section 3690 of the Internal Revenue Code

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties) against the person against whom such tax is assessable, on the date such tax becomes immediately due and payable, and immediate notice and demand shall be made by the collector of the person against whom such tax is assessable. Upon failure or refusal to pay such tax, penalty, and interest, collection therefore by distraint shall be lawful without regard to the period prescribed in section 6378.

(b) The collection of the whole or any part of any assessment, penalty, or interest, may be stayed by filing with the collector a bond in such amount, not exceeding double the amount of the assessment, penalty, and interest, and such sureties as the collector in his discretion may require. The sum assessed shall be recovered as expense of the Government immediately after demand is made by the government, and interest at the rate of 5 per centum per annum from the date of the assessed deficiency until paid, in accordance with the provisions of section 3690.


§ 402.801 Jeopardy assessments. Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should state the full name and address of the person involved, the tax, return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer, a reference to any prior assessment made for such period against the taxpayer, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount, with respect to which the stay is desired, and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of the bond or bonds the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to the tax, and interest by distraint without regard to the period prescribed in section 3690 of the Internal Revenue Code.*

Section 1420 (a) of the Act

If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.

Section 3665 of the Internal Revenue Code

(a) Delivery. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be served by mail, stating the amount of such taxes and demand for payment thereof.

(b) Additional tax for nonpayment. If such person does not pay the taxes, within ten days after the notice or the mailing of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment.

§ 402.802 Interest. If the tax is not paid to the collector when due and is not adjusted under section 402.703 or 402.703b, interest accrues at the rate of 6 per centum per annum.*

§ 402.803 Addition to tax for failure to pay an assessment after notice and demand. (a) If tax, penalty, or interest is assessed and payment thereof is not made within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655 of the Internal Revenue Code (except as provided in paragraph (b) of this section) a penalty of 5 per centum of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 per centum penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 per centum penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.*

Section 3612 (d) and (e) of the Internal Revenue Code

(a) False returns. In case a false or fraudulent return or list is filed, there shall be added to the amount of the tax a penalty of $50 if the failure is for not more than 30 days, and an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 5 per centum in the aggregate. In computing the period of delinquency all Sundays and holidays after the due date are counted.

(b) False returns. If a person fails to file a return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(c) False returns. False returns. As a part of the tax. The provisions of the Internal Revenue Code, is 50 per centum of the total tax due for the entire period involved including any tax previously paid.*

Section 2707 of the Internal Revenue Code, made applicable by section 1430 of the Act

(a) Any person who willfully fails to pay, exact, or truthfully account for and pay over the tax ** * * or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be liable to a penalty of not more than $10,000, and if the failure to make such return or list, is a failure to keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such return, keep such records, supply such information, at the time or times required by law or regulations, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than one year, or both, together with the costs of prosecution. **

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax, shall, if the failure to collect or account for such tax is a failure to keep such records, or supply such information, at the time or times required by law, or regulations, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year.

For statutory authority for these regulations, see note to section 4021.

*For statutory authority for these regulations, see note to section 4021.

fasin percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return which is prescribed not to exceed 5 per centum to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 5 percent in the aggregate. In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(1) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(2) Those who file tardy returns and are unable to show reasonable cause for the delay.

A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) False returns. False returns. If a person fails to file a return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(c) False returns. False returns. As a part of the tax. The provisions of the Internal Revenue Code, is 50 per centum of the total tax due for the entire period involved including any tax previously paid.*

Section 2707 of the Internal Revenue Code, made applicable by section 1430 of the Act

(a) Any person who willfully fails to pay, exact, or truthfully account for and pay over the tax ** ** or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be liable to a penalty of not more than $10,000, and if the failure to make such return or list, is a failure to keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such return, keep such records, supply such information, at the time or times required by law or regulations, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than one year, or both, together with the costs of prosecution. **

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax, shall, if the failure to collect or account for such tax is a failure to keep such records, or supply such information, at the time or times required by law, or regulations, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year.

For statutory authority for these regulations, see note to section 4021.

*For statutory authority for these regulations, see note to section 4021.
Five years, or both, together with the costs of prosecution.

(a) False Return. Delivers or discloses to the collector of internal revenue, or to any officer, any false or fraudulent return, or any certificate, affidavit, or deposition, knowing such certificate, affidavit, or deposition to be false, fictitious, or fraudulent; or who shall knowingly and willfully fail to or refuse to sign, or cause or attempt to cause to be signed, any record, report, or other paper, or any information obtained, obtained at any time by the Board or from any officer or employee of the Board in the course of discharging the duties of the Board, or any other information, obtained at any time by any person from the Board or from any officer or employee of the Board, shall be fined not exceeding $1,000, or imprisoned not exceeding one year, or both.

Section 3616 of the Internal Revenue Code

Whoever, for the purpose of causing an increase in any payment authorized to be made under this title [Title II of the Social Security Act, as amended] (a) by the Board or from any officer or employee of a partnership, who as such officer, employee, or partner thereof, or any person who is with the knowledge or consent of the partnership, is authorized or required to present such return, affidavit, claim, or document, shall be fined not more than $1,000, or imprisoned not more than five years, or both, together with the costs of prosecution.

Section 3791 of the Internal Revenue Code

(a) Authorization.—

(1) In general.—The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this subchapter.

(2) In case of changes in law.—The Commissioner may make all such rules, regulations, and orders as may be necessary or proper to execute the provisions of the Internal Revenue Code, or to carry out any of the purposes of this subchapter or any of the purposes of the Social Security Act, as amended.

(3) In case of regulations of the Secretary.—The Commissioner may make all such rules and regulations as may be necessary for the execution of the provisions of the Internal Revenue Code, or to carry out any of the purposes of this subchapter, and no disclosure of any return or portion of a return, or any written statement or representation in connection with any matter arising under the Internal Revenue Code, or the Social Security Act, shall be made unless there is a written authorization to such disclosure, or unless there is a written statement or representation in connection with any matter arising under the Social Security Act, as amended.

(b) Effect of regulations of the Secretary.—The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

§ 402.805 Promulgation of regulations. In pursuance of section 1429 of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed. (See sections 402.101 and 402.102, relating to the scope of these regulations and the extent to which they supersede prior regulations.)

T. Moore,
Acting Commissioner of Internal Revenue.

Approved, February 24, 1940.

John L. Sullivan,
Acting Secretary of the Treasury.

F. R. Doc. 49-613; Filed, February 25, 1940; 11:24 a.m.

Title 29—Labor

Chapter V—Wage and Hour Division

Part 516—Regulations on Records to Be Kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act

The following amendment to Regulations, Part 516 (Regulations on Records to be Kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act of 1938) is hereby issued. This amendment amends § 516.3 of said regulations, places and period for keeping records, and shall become effective upon my signing the original publication thereof in the Federal Register and shall be in force and effect until repealed or modified by regulations thereafter made and published.

SIGNED at Washington, D. C., this 20th day of February 1940.

Harold D. Jacobs,
Administrator.